

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FUSION ELITE ALL STARS , et al., Plaintiffs, v. VARSITY BRANDS, LLC , et al., Defendants.	Case No. 2:20-cv-02600-SHL-cgc JURY TRIAL DEMANDED
JONES , et al., Plaintiffs, v. BAIN CAPITAL PRIVATE EQUITY , et al., Defendants.	Case No. 2:20-cv-02892-SHL-cgc JURY TRIAL DEMANDED
AMERICAN SPIRIT AND CHEER ESSENTIALS, INC. , et al., Plaintiffs, v. VARSITY BRANDS, LLC , et al., Defendants.	Case No. 2:20-cv-2782-SHL-cgc JURY TRIAL DEMANDED

**DECLARATION OF VICTORIA SIMS IN SUPPORT OF OPPOSITION TO
DEFENDANTS' MOTION FOR PROTECTIVE ORDER**

I, Victoria Sims, declare the following under penalty of perjury:

1. I am an attorney with the law firm of Cuneo Gilbert & LaDuca LLP, counsel for Plaintiffs, and Interim Co-Lead Counsel for Direct Purchasers in the above-captioned matter, *Fusion Elite, et al. v. Varsity Brands, et al.*, Case No. 2:20-cv-02600-SHL-cgc. I make this declaration on personal knowledge and review of my files, except as otherwise indicated. I submit this declaration in support of Plaintiffs' Opposition to the Motion for Protective Order (*Fusion Elite*, Dkt. 221 or "Motion") filed by Defendants Varsity Spirit, LLC, Varsity Brands, LLC, Varsity Brands Holding Co., Inc., and Varsity Spirit Fashion & Supplies, LLC ("Varsity"), Defendant U.S. All Star Federation ("USASF"), Defendant Bain Capital, LP ("Bain"), and Defendant Charlesbank Capital Partners, LLC ("Charlesbank") (collectively, "Defendants").

2. *Fusion Elite* Plaintiffs served their First Set of Requests for Production on Varsity on October 16, 2020.

3. *Fusion Elite* Plaintiffs served their First Set of Requests for Production on USASF on October 19, 2020.

4. Varsity did not agree to produce documents from certain disputed custodians, responsive to Plaintiffs' First Set of Requests for Production until August 15, 2021, as set forth in correspondence between me and Steven Kaiser counsel for Varsity, dated May 5, 2021, attached as Ex. 1.

5. USASF completed its document production on January 14, 2022, as a result of negotiations stemming from the Motion to Compel Plaintiffs filed against USASF.

6. *Fusion Elite* Plaintiffs noticed the depositions of former Varsity employees Brian Elza and Francis “Tres” Xavier LeTard, III on September 14, 2021, as set forth in the Notice attached as Ex. 2.

7. On September 29, 2021, *Fusion, Jones* and *American Spirit* Plaintiffs provided Defendants with a stipulation that would enable deposition coordination among Plaintiffs in all three related cases, as set forth in the correspondence from Mark Suter to Steven Kaiser, attached as Ex. 3. Defendants did not agree to enter into this stipulation.

8. On October 11, 2021, Plaintiffs received correspondence from Varsity, attached as Ex. 4, providing contact information for Mr. Elza’s and Mr. LeTard’s counsel.

9. On October 14, 2021, Plaintiffs confirmed deposition dates for Mr. Elza and Mr. LeTard, with their counsel, as set forth in the correspondence attached as Ex. 5.

10. Plaintiffs deposed Brian Elza on November 16-17, 2021.

11. Plaintiffs deposed Francis “Tres” Xavier LeTard, III on November 22, 2021.

12. Plaintiffs served their 30(b)(6) Notice on Varsity on November 15, 2021, as set forth in correspondence from me to Steven Kaiser, attached as Ex. 6.

13. Varsity declined to engage with Plaintiffs on their 30(b)(6) topics until January 31, 2022, as set forth in correspondence between Steven Kaiser and Katherine Van Dyck, in Ex. 6.

14. Attached as Ex. 7 is a true and correct copy of the first, second and last pages of the transcript of the deposition of Josh Quintero, showing a running time of approximately five hours.

15. Cole Stott is the former President of Varsity’s Knoxville office. Varsity produced 1,276 pages for Mr. Stott, as a custodian.

16. Marlene Cota's production to Varsity following Chief Magistrate Pham's Order of January 28, 2022, includes over 1,000 pages.

17. As described in Ex. 8, the declaration of Marlene Cota's attorney, Bryan Meredith, I spoke with Mr. Meredith on March 10, 2022. Mr. Meredith and I agreed that Ms. Cota's deposition would proceed April 6-7, for up to 14 hours. These dates were selected to accommodate Defendants, as the other dates when Ms. Cota was available did not work for Defendants.

18. As described in the correspondence attached as Ex. 9, counsel for Varsity, Mr. Mulqueen, agreed that Ms. Cota's deposition would "begin" on April 6, and at no time did Mr. Mulqueen ask Plaintiffs to share any of their deposition time with Defendants. As part of the agreement, Plaintiffs agreed to move another deposition, that of Ms. Noone, to accommodate Mr. Mulqueen's schedule.

19. Ex. 10 is a true and correct copy of correspondence between Mark Suter and defense counsel regarding the scheduling of Defendant depositions, including those of Jeff Fowlkes and John Sadlow.

Executed this 1st day of April, 2022 in Washington, DC.

s/ Victoria Sims
Victoria Sims